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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 UNITED STATES OF AMERICA, New York, N.Y.

5 v. 16 Cr. 468 (GHW)

6 JAMES GRANT and JEREMY  
7 REICHBERG,

8 Defendants.  
9 -----x

10 November 5, 2018  
11 5:33 p.m.

12 Before:

13 HON. GREGORY H. WOODS,

14 District Judge

15 APPEARANCES

16 GEOFFREY S. BERMAN  
17 United States Attorney for the  
18 Southern District of New York  
19 BY: JESSICA R. LONERGAN  
20 KIMBERLY J. RAVENER  
21 MARTIN BELL  
22 Assistant United States Attorneys

23 HAFETZ & NECHELES, LLP  
24 Attorneys for Defendant Reichberg  
25 BY: SUSAN R. NECHELES

26 MERINGOLO & ASSOCIATES  
27 Attorneys for Defendant Grant  
28 BY: JOHN MERINGOLO  
29 ANJELICA CAPPELLINO

IB5KGRA1

(A jury of 12 and 4 alternates was impaneled and sworn)

(In open court; jury present)

THE COURT: Thank you very much. You can be seated.

So, ladies and gentlemen, from this time until you retire to deliberate on your verdict, it's your duty not to discuss this case and not to remain in the presence of any other persons who may discuss this case in your presence.

The rule about not discussing the case with other people includes discussions with each other. So you should not talk with each other about the case or any of the issues involved in it.

I'm going to talk to you more about what the process is tomorrow, but, basically, the parties can only put in their case witness by witness and exhibit by exhibit, and it's very important that you not reach a conclusion about any of the issues in the case until all of the evidence is in. So it's for that reason that I ask you not to talk with each other about the case until all of the evidence is in and you retire to deliberate on your verdict.

You also should not communicate with anyone else about this case. If you want, you can tell your family members and friends that you've been ordered not to talk about this case by me. You can tell them that you have been seated as a juror in a criminal case in federal court, but beyond that, please do

IB5KGRA1

1 not talk about the case with anyone else. When I say don't  
2 talk about it, I should say don't communicate about it because  
3 you also should not blog about it, or tweet about it, or write  
4 about it on your Facebook pages, and don't communicate about  
5 the case at all with anyone. Again, this is to ensure that the  
6 parties here receive a fair and impartial trial based solely on  
7 the evidence that's presented here in court.

8 Now, as I told you earlier, the lawyers and the  
9 parties will be here, you may see them out in the halls. If  
10 they don't talk to you, again, they're not being rude; they're  
11 just following my instructions not to talk to you and not to  
12 have any improper communications with you.

13 So, in order to help avoid the possibility of any such  
14 improper communications, I'm going to ask you to begin each  
15 morning in the jury room. Mr. Daniels will show you where that  
16 is. You should not come into this courtroom. You'll see  
17 there's a separate, special entrance for members of the jury  
18 that Mr. Daniels will show you momentarily.

19 So tomorrow morning, please be here, all of you, no  
20 later than 9:45. I expect to start as promptly as possible.  
21 We can't start until all of you are here. So if any one of you  
22 is five, ten minutes late, it means that I and the lawyers and  
23 the parties will have to wait until you arrive. So please try  
24 your hardest to be here on time.

25 Thank you very much for all of your patience during

IB5KGRA1

1 this process today. I, again, appreciate it very deeply. I'm  
2 going to excuse you until tomorrow morning, when you should  
3 come directly to the jury room, where Mr. Daniels will take you  
4 now.

5 (Jury not present)

6 THE COURT: Thank you very much, ladies and gentlemen.  
7 You can be seated.

8 So, counsel, again, thank you for all the work that  
9 you've done during the course of the day today. I think that,  
10 given the hour, we're going to need to adjourn. Part of the  
11 reason why I suggested that the jurors get here later tomorrow  
12 morning is, in addition to the fact that it's Election Day, the  
13 fact that I expect that there may be issues that the parties  
14 wish to address with the Court prior to opening statements.

15 Let me say a few words about what it is that I expect  
16 to do tomorrow before opening statements, in addition to  
17 discussing any issues that the parties want to raise with me.

18 I will provide the jurors with, I'll call it, a set of  
19 preliminary instructions. The counsel who are here are all  
20 very experienced and can expect what it is that I'm going to  
21 talk to them about. I expect to provide a short overview about  
22 the topics of: Impartiality, my role, the jury's role. I  
23 expect to say some words about what is and is not evidence,  
24 including the traditional anecdote about circumstantial  
25 evidence. I'm going to talk to them about what is and is not

IB5KGRA1

1 evidence. I'll provide them with some brief comments about the  
2 evaluation of evidence.

3 I will then provide them with a brief statement  
4 regarding the burden of proof, emphasizing that this is a  
5 criminal case, and that it's the government's burden to prove  
6 each defendant guilty beyond a reasonable doubt.

7 Then I will talk about some rules of conduct,  
8 reiterating some of the issues that you already heard me talk  
9 about. I'll talk to them about the note-taking process.

10 Then I will introduce both the order of trial, and  
11 then the parties' opening statements.

12 That bit of introductory commentary that I expect to  
13 provide the jurors will probably last 15 minutes or so, perhaps  
14 20, so I expect that that will take up some time before the  
15 opening statements themselves.

16 So that's what I wanted to preview for you, and,  
17 again, I apologize that we are unable to take up much  
18 additional work now. That said, I'd be happy to hear from the  
19 parties if there are any particular issues that you'd like to  
20 highlight for my attention before we adjourn for today.

21 Counsel for the government?

22 MS. LONERGAN: Your Honor, only to say that we filed  
23 something by email at lunch because ECF was down. I have hard  
24 copies here for the Court and for defense, but we will also  
25 endeavor to put it up on ECF tonight, if we can figure out

IB5KGRA1

1 whatever technical problem is preventing us from doing that.

2 It's in response to at least one of the one portion of one of  
3 the motions that was filed last night by counsel for defendant  
4 Reichberg.

5 THE COURT: It's the Bruton issue?

6 MS. LONERGAN: Yes, it is, your Honor.

7 THE COURT: Can I ask for a brief preview on that?

8 Because that did raise some concerns when I read Ms. Necheles'  
9 letter.

10 MS. LONERGAN: Your Honor, so Bruton and its progeny  
11 are essentially focused on -- the word that is used in Bruton  
12 is "confessions," and usually what's encapsulated in that are  
13 incriminating statements by a nontestifying codefendant. In  
14 particular, the case law looks at the fact about whether the  
15 statements that are sought to be offered by the nontestifying  
16 codefendant inculcate the other defendant. So a statement that  
17 is totally nonincriminating or noninculpatory towards another  
18 defendant, even if it mentions the other defendant's name, does  
19 not pose a Bruton issue or a Crawford issue when it's issued  
20 only against the defendant who made a statement.

21 In particular, the case law has held, has carved out,  
22 that false exculpatory statements, while there's a legitimate  
23 purpose for them to be offered against the defendant who made  
24 them, usually are not going to create a Bruton issue until  
25 there's shifting blame to someone else, so if they're shifting

IB5KGRA1

1 blame to a codefendant, clearly that would be a Bruton issue.

2                   Here, however, the statements that we intend to offer,  
3 whether they're either viewed separately -- statements one,  
4 two, three and four, as we outline them -- or collectively, are  
5 essentially either a false exculpatory or nonincriminating on  
6 their face.

7                   THE COURT: Thank you. I apologize. I'll hear more  
8 about this, and I will be better informed after I read your  
9 letter.

10                  What do you mean by false exculpatory?

11                  MS. LONERGAN: Yes, your Honor.

12                  So the narrative that defendant Grant or the -- what  
13 the government will argue is that the narrative that defendant  
14 Grant provided, when he was interviewed by the FBI, was a false  
15 exculpatory narrative. In particular, he did not admit, of  
16 course, to the crimes with which he is charged here; rather,  
17 when asked about defendant Reichberg, he said, we have a  
18 long-term friendship, we have a personal relationship, which,  
19 by the way, are not points, I think, the defendants are  
20 contesting; I think they in fact argued them before this Court,  
21 and have said they raise a potential defense to the crime.

22                  And then Grant --

23                  THE COURT: I'm sorry, I'll hear more about this and I  
24 don't want to take too much of your time, but can you give me a  
25 sense of whether or not the analysis here, as the government

IB5KGRA1

1 proposes it, requires that the Court make a determination  
2 whether or not the exculpatory statement is false or true --

3 MS. LONERGAN: No, your Honor.

4 THE COURT: -- in order to assess those?

5 MS. LONERGAN: I think what the analysis here turns on  
6 is whether these statements incriminate Reichberg. If they do  
7 not incriminate Reichberg, then I do not believe that Bruton  
8 applies, because the concern highlighted by the Supreme Court  
9 in Bruton and its progeny is that, of course, a jury is  
10 normally presumed to follow instructions, but when a defendant,  
11 a nontestifying codefendant, makes a confession, admits to his  
12 crimes, and implicates his codefendant in those crimes, that  
13 that type of evidence is so -- I don't know what the word is --  
14 "explosive" -- it's not the best word but it's the only word I  
15 can think of right now -- that it is so powerful that, in that  
16 narrow instance, a jury cannot be presumed to follow the  
17 instruction to only consider the confession against the  
18 defendant who made it.

19 However, when the statements do not on their face --  
20 either (a) don't really even admit to the crime and (b) do not  
21 incriminate the other defendant, the particular unique concerns  
22 considered in Bruton are not availing, and, rather, the  
23 statement -- rather, in that sense, when the jury is  
24 instructed, you may only consider this statement against the  
25 defendant who made it, here Grant, that because it's not such a

IB5KGRA1

1 powerful admission of guilt and implication of the codefendant  
2 in guilt, that, in that circumstance, a jury can be presumed to  
3 follow the instructions given to it by the Court.

4 THE COURT: Thank you. I will look at your letter and  
5 look at case law in the interim.

6 Can I ask for a brief paragraph regarding the  
7 government's view about what is an incriminating statement for  
8 these purposes?

9 MS. LONERGAN: Yes, your Honor.

10 An incriminating statement, again, the word that's  
11 used in Bruton and the cases that follow is a confession. So I  
12 think, essentially, what that is, is a statement that admits to  
13 elements or to participation in the crime. Of course, it  
14 doesn't have to be every element of the crime but, essentially,  
15 somehow admitting to participation in the crime and  
16 implicating, for the Bruton issue, implicating another  
17 defendant in the commission of the crime.

18 THE COURT: Thank you. I will think about it more.  
19 Just help me understand the argument.

20 Assume -- it's not this case. Just help me think  
21 about it.

22 MS. LONERGAN: Yes, your Honor.

23 THE COURT: Imagine it's a murder case and someone is  
24 murdered in a particular house at a particular time. If a  
25 codefendant says that, my codefendant was in the house at that

IB5KGRA1

1 time, is that not incriminating, from the government's  
2 perspective, using this analogy?

3 MS. LONERGAN: So, your Honor, the Supreme Court has  
4 actually addressed exactly these issues. There are three cases  
5 that I think that will be helpful for the Court on this point,  
6 all of which we cite. One is Bruton, the next one is  
7 Richardson, and then there's a third one, Gray, which really  
8 talks about redacted confessions. I think Richardson is the  
9 most instructive on this point.

10 So Richardson talks about the fact that sometimes  
11 statements can, when they are put together with other evidence  
12 in the case, may incriminate, but that what you're really  
13 looking for is, is the statement incriminating on its face as  
14 to the codefendant. And it talks about what inferences should  
15 or should not be drawn. And they talk about a statement -- so,  
16 for example, the example that the Court just gave, if the  
17 defendant, who's nontestifying, says, I was at this house and  
18 my codefendant was there but they used the name and they say,  
19 for example, on the night of the murder, that that might very  
20 well be an incriminating statement.

21 However, if there is still something where, let's say,  
22 it's a case unlike this one, where the defendants are not  
23 admitting that they are friends, the defendants in fact maybe  
24 alleged that they never knew each other, and the statement  
25 says, oh, yeah, I met this person, on its face, it may be

IB5KGRA1

1 linked with other evidence that you hear in the case, that the  
2 fact that the two defendants knew each other could be  
3 incriminating, but that, on its face, the statement just says  
4 defendant A and defendant B, yeah, I knew defendant B.

5 THE COURT: Thank you.

6 Counsel for defendants -- I'll turn to you first,  
7 Ms. Necheles -- and I apologize because I don't believe that we  
8 have time now to engage in a full conversation about this, but  
9 I've just taken the opportunity to hear from the United States  
10 before I retire to consider these issues and to review the case  
11 law. Are there any arguments that you'd like to put in front  
12 of me so that I am consider them as I am reviewing the  
13 submissions?

14 MS. NECHELES: Yes, your Honor.

15 I think that Ms. Lonergan misunderstands --

16 THE COURT: Can I ask you to move the microphone a  
17 little closer to you, please.

18 MS. NECHELES: Sure.

19 I think she misunderstands the case law, and it is  
20 confusing. I believe that what the case law is, is that if a  
21 statement is facially inculpatory -- in other words, it names  
22 the defendant -- then it doesn't matter how minor inculpatory  
23 it is. It doesn't matter that it only will convict you if it's  
24 put together with other evidence. And, of course, that makes  
25 sense, because the Court should not be determining like, oh,

IB5KGRA1

1 this is only a little piece of evidence and therefore it  
2 doesn't violate his Sixth Amendment rights.

3 What the Supreme Court and other courts have said is,  
4 if it is not facially inculpatory, if you can redact the  
5 defendant's name, then even if you can put it together with  
6 other evidence -- and that's what Ms. Lonergan was talking  
7 about -- then you don't have to exclude it. But that is only  
8 if it's not facially inculpatory.

9 If it is facially inculpatory, I believe you must  
10 exclude it, except there is one little exception -- and I did  
11 not read both of the cases, and that she just cited one of  
12 these today -- in Trapiano what they talk about, Trapiano was,  
13 if it's just a statement where the defendant was saying I don't  
14 know those people, if Jimmy Grant had said, I don't know  
15 Jeremy, well, that would be one thing. He said the opposite.

16 And, your Honor, I think it's pretty clear, there are  
17 four statements here. Only one of them does the government say  
18 is a false exculpatory. And I don't care if that false  
19 exculpatory comes in.

20 The other three they want to put in for context, to  
21 show the whole picture, whatever, but all they're saying is, I  
22 want to put in all of Jimmy Grant's statements. And there is  
23 no question that you cannot take Mr. Reichberg's name out of  
24 it, because otherwise they would just -- the whole point, he's  
25 saying, I met with Reichberg, I knew Reichberg. And it's true

IB5KGRA1

1 there will be other evidence of that at trial, which I think  
2 points to the fact that they don't need this evidence; there  
3 will be other evidence.

4 THE COURT: Good. Thank you. I appreciate that.

5 One other thing before we recess for the day relates  
6 to the government's letter that was submitted in the early  
7 morning last Friday or late Thursday evening, which is  
8 effectively a motion in limine regarding a number of the  
9 defendants' anticipated exhibits and experts. Since the time  
10 of our last conference I have had the opportunity to actually  
11 look at that submission. I now have a better understanding of  
12 what it is that it's doing.

13 It is functionally an extended motion in limine with  
14 respect to a number of those pieces of evidence and witnesses.  
15 I would want to invite the defense to respond to it in writing  
16 before ruling on the arguments raised in it. So I wanted to  
17 talk briefly about a process that we could use to permit the  
18 defense to respond to those arguments.

19 MS. NECHELES: So, your Honor, I think virtually all  
20 of that evidence will go to the Reichberg -- or the Rechnitz  
21 cross-examination. I don't know when he will be taking the  
22 stand. Maybe if we could get some clarity on that, we could  
23 have a better idea of what the timing is.

24 So what we were thinking of doing, your Honor, is  
25 putting in some general principles and then, because I think

IB5KGRA1

1 that until we hear really a lot of his direct, I can't even  
2 tell you what is -- what we will really be using the stuff for.  
3 I put all of this in out of an abundance of caution. I'm not  
4 sure what I will be using. I haven't heard the direct.

5 We also have real issues now. I don't know what the  
6 government plans to do about the de Blasio stuff. Late, late  
7 last night/early this morning, they put in a letter saying  
8 something. I don't really know what it said. It said, maybe  
9 we won't put it in, maybe we will.

10 THE COURT: Thank you.

11 So, counsel, I will talk to you, I think, tomorrow  
12 morning about a process to put in front of me defense's  
13 arguments related to the government's, what I'll call, the  
14 motions in limine and that letter motion. We can, I believe,  
15 discuss that fruitfully tomorrow. Thank you for the context.

16 We should talk briefly about the government's letter  
17 from yesterday about the de Blasio testimony. From your  
18 comments, Ms. Necheles, I take it that you have not had a lot  
19 of time to consider the issues raised there. I have not had an  
20 extensive amount of time to do so either.

21 I would like to discuss this issue, if we can,  
22 effectively, briefly now, but I don't know if the defense is in  
23 a position to do so meaningfully.

24 MS. NECHELES: Well, I'm not sure where the government  
25 is at. Are they proposing that they will keep out all the

IB5KGRA1

1 evidence on de Blasio?

2 THE COURT: Thank you.

3 Counsel for the United States, can I hear from you.

4 MS. RAVENER: Yes, your Honor. One moment.

5 THE COURT: Thank you. Please take your time.

6 (Pause)

7 MS. RAVENER: Yes, your Honor. Thank you for the  
8 opportunity to address that.

9 I think, from the government's perspective, we'd like  
10 to take this up with the defense in the first instance. We  
11 submitted the letter to the Court so that the Court would be on  
12 notice, particularly with respect to any possible impact on  
13 opening statements, that we were seriously considering offering  
14 this as a possible resolution to the defense.

15 It is not so simple as saying simply all of this  
16 evidence will be in or out -- it touches on several areas --  
17 and so we'd like the opportunity to discuss that tonight and  
18 raise that with the Court tomorrow.

19 THE COURT: Good. Thank you. I'll grant you that  
20 opportunity.

21 Please do confer with counsel for defendants. My  
22 sense from your letter was that was what you were putting on  
23 the table for further discussion. Among the things that I  
24 expect that the parties will discuss is how this would be  
25 framed in light of Mr. Meringolo's comments about the other

IB5KGRA1

1 alternative approach that we began to probe toward during our  
2 last conference. The parties are aware of that concern, and  
3 I'm sure that you can address it meaningfully during your  
4 conversations.

5 Is there anything else that we should talk about here?

6 MS. NECHELES: Yes, your Honor. I believe that the  
7 government intended to call the witness who was going to  
8 testify about Jimmy Grant tomorrow, about his statement  
9 tomorrow. That was on the witness list. And we would also ask  
10 for the witness list for Wednesday.

11 THE COURT: Thank you.

12 Counsel?

13 MS. LONERGAN: Your Honor, that's correct. And the  
14 information about this interview with Grant is also in the  
15 government's opening statement. The government will have a  
16 version of its opening statement that -- we'll have multiple  
17 versions of the opening statement in order to comply with any  
18 ruling provided by the Court, but, if possible, given that we  
19 were planning to call that witness tomorrow quite early in our  
20 order of proof, and so, if it's possible, it would be helpful  
21 to have clarity on this tomorrow morning. If not, and if the  
22 Court knows now that the Court doesn't think we can resolve  
23 this issue tomorrow morning, then we will just have to do some  
24 witness reshuffling, which we can do, but that would be helpful  
25 for us to have sense of the Court's position.

IB5KGRA1

1                   THE COURT: Thank you.

2                   I don't have a sense of the right answer to this  
3 question at this time to provide you guidance either as to  
4 whether or not I believe that the statements can come in or if  
5 they should stay out. I think I need to review the  
6 government's supplemental briefing on this issue and to review  
7 the cases that you pointed me to. I don't think that I can  
8 give you a clear sense now in one direction or another,  
9 unfortunately, at this time.

10                  MS. LONERGAN: Your Honor, I don't think that's what  
11 we're asking for; just if the Court anticipated whether we  
12 would be able to resolve this tomorrow morning between 9:00 and  
13 9:45. If the Court thinks it's not at all possible that we'll  
14 resolve this tomorrow morning, then that will lead us down one  
15 road. If the Court thinks, clearly without a commitment, but  
16 if the Court thinks it's potentially feasible to resolve this  
17 in the morning, then we'll proceed in another course.

18                  THE COURT: Thank you. I think it's potentially  
19 feasible. I will spend time between now and tomorrow morning  
20 trying to review these issues.

21                  MS. LONERGAN: Thank you.

22                  THE COURT: And to the extent possible, I will work to  
23 resolve it before the opening statements tomorrow, during the  
24 early discussions.

25                  MS. LONERGAN: Thank you very much, your Honor.

IB5KGRA1

1                   THE COURT: Good. Thank you.

2                   Anything else?

3                   MS. NECHELES: Your Honor --

4                   THE COURT: I'm sorry, Mr. Meringolo was standing.

5                   MR. MERINGOLO: Sorry, Judge.

6                   THE COURT: That's fine.

7                   MR. MERINGOLO: Just a few things.

8                   The Grant team didn't our hard copy of all the  
9 government exhibits. We would like that tomorrow before the  
10 opening, if possible.

11                  THE COURT: Thank you.

12                  Counsel for the United States, do you have such a copy  
13 for defendant Grant?

14                  MS. LONERGAN: Your Honor, we didn't understand that  
15 to be his request, but now that we understand that, we will  
16 endeavor to get it to him by tomorrow's opening statements.

17                  THE COURT: Thank you.

18                  I have two copies of the government's exhibits. I'd  
19 be happy for you to have one of them today, if that would be  
20 helpful to the defense.

21                  MR. MERINGOLO: Thank you.

22                  Just so you know, we planned to open on the de Blasio  
23 also. I don't have to, and you can rule two minutes before I  
24 do de Blasio opening; it's not going to affect --

25                  THE COURT: Thank you.

IB5KGRA1

1 MR. MERINGOLO: But we plan to do that.

2 THE COURT: Thank you very much. I appreciate the  
3 alert.

4 My recommendation is that the parties discuss the,  
5 I'll call it, opportunity presented by the government's letter  
6 from yesterday. That may take that issue potentially off the  
7 table. It may.

8 MR. MERINGOLO: Thank you, Judge.

9 THE COURT: What I would recommend is that you prepare  
10 with the prospect that I would ask you not to open on that  
11 issue at this time. It appears there are a number of issues  
12 that we will need to hear about, in order to have for me to  
13 have comfort that the mayor's testimony would come in, and I  
14 don't want you to be in a position you have argued something to  
15 the jury that is ultimately excluded. I can't commit to you at  
16 this point that the testimony will come in.

17 MR. MERINGOLO: The only thing -- and the government  
18 knows this because it's happened in the other trial -- is what  
19 the cooperating witness did was doctor emails with the mayor  
20 and then send it on to various business associates or potential  
21 business partners, just to make himself look good. I would  
22 believe that's --

23 THE COURT: Thank you very much.

24 I don't understand that to be within the scope of the  
25 concerns that I had previously. In other words, if the

IB5KGRA1

1 testimony of Mr. Rechnitz is that he falsified emails with the  
2 mayor, and that that's part of the anticipated testimony by the  
3 witness, by this witness, that's not the concern that I was  
4 commenting on.

5 MR. MERINGOLO: But that's what I would be opening on.

6 THE COURT: Thank you. Understood. Thank you for  
7 framing that.

8 Counsel for the United States, I don't believe that I  
9 have a concern regarding that issue being raised in the opening  
10 statements. I thought that counsel was alluding to the  
11 prospect of testimony by the mayor in his opening.

12 MR. MERINGOLO: No, Judge. That's fine.

13 THE COURT: Thank you. That's fine.

14 Counsel for the United States, any concerns about that  
15 issue coming in the opening?

16 MS. RAVENER: One moment, your Honor.

17 THE COURT: Thank you.

18 MS. RAVENER: Your Honor, we don't anticipate that  
19 being an issue. I will just note, this is one of the ways in  
20 which this issue requires more fulsome discussion between the  
21 parties before we can craft a solution.

22 THE COURT: Good. Thank you very much. I appreciate  
23 the parties' work on that and that all of you are very deeply  
24 familiar with the facts in a way that I am not.

25 Anything else that we should take up now?

IB5KGRA1

1 Ms. Necheles?

2 MS. NECHELES: Your Honor, it strikes me that even if  
3 your Honor were to rule on the Bruton issue, we would then have  
4 to deal with it -- should your Honor allow it in, we would have  
5 to deal with issues about the scope of it and also any sort of  
6 limiting instructions. So I think it's kind of hard to say  
7 that the witness will be testifying on this tomorrow.

8 THE COURT: Thank you.

9 I think that is a fair comment that we may need to do  
10 additional work to frame the testimony and to provide any  
11 limiting instruction. Should it come in, I will put that in  
12 the bucket of issues that may lead the government to consider  
13 shuffling their witness list for tomorrow or to defer this  
14 testimony until a date, when we have the opportunity to fully  
15 air these issues.

16 MS. RAVENER: Your Honor, we will, of course, adhere  
17 to any determination like that by the Court. I think I would  
18 just note, from the government's perspective, we don't think  
19 the issue, hopefully, will require that much extensive  
20 deliberation and that we can proceed as planned. This has been  
21 this evidence has been known to the defense for approximately  
22 five months.

23 THE COURT: Thank you. Understood.

24 I just can't take a position on it at this time  
25 because I don't have enough information about the arguments.

IB5KGRA1

1 Anything else we should talk about?

2 MS. NECHELES: Yes, two things, your Honor.

3 THE COURT: Yes, counsel.

4 MS. NECHELES: Will the defense be able to use the  
5 back room here, for storage, for using for sort of us meeting  
6 during breaks?

7 THE COURT: Thank you.

8 MR. BELL: Your Honor, I have a childcare issue. May  
9 I be excused?

10 THE COURT: You may.

11 Yes, counsel for defendant, I don't have an issue with  
12 the defendants using one of those rooms. Please be mindful of  
13 the fact it may not always be locked, so you may not want to  
14 leave things there, but I don't mind if you use that as a place  
15 to confer.

16 MS. NECHELES: Okay.

17 And, your Honor, just with respect to the -- I dispute  
18 the idea that we had this for five months. This was an issue  
19 that the government specifically said --

20 THE COURT: Thank you. I saw your point in the  
21 letter.

22 MS. NECHELES: So I don't want to get into that.

23 But with respect to the witness list for Wednesday?

24 THE COURT: Thank you.

25 Counsel for the government?

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1 MS. RAVENER: Your Honor, we'd like to take a look at  
2 the calendar, given this possible discovery shuffling, and we'd  
3 be happy to provide it tonight to defense.

4 THE COURT: Thank you very much.

5 MS. NECHELES: Your Honor, the government have made a  
6 commitment they will provide it by the end of the court day.  
7 We have to prepare for tomorrow for the next day. They're  
8 giving us very short notice, as it is.

9 MS. LONERGAN: Your Honor, they have had the whole  
10 weekend our anticipated witnesses for tomorrow. So I don't  
11 really -- it's well before the end of the court day, but we've  
12 all been in court all day, and we're now working on the  
13 witnesses for tomorrow, but for Wednesday, I'm not  
14 understanding what the issue is today.

15 MS. NECHELES: That's what I'm asking about.

16 THE COURT: Thank you.

17 Counsel, please confer about this issue. The  
18 government did make a commitment, and I will expect that they  
19 will live up to it.

20 One brief scheduling issue regarding Wednesday: I  
21 have a commitment that I made long before this trial was  
22 scheduled -- certainly before it was scheduled for this set of  
23 dates -- that's going to require that I end the court day a  
24 little bit early on Wednesday, around 2:00. I'm speaking on a  
25 panel. So I expect to end early on Wednesday, to the extent

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1 that that's at all of interest to the parties.

2 MS. NECHELES: Sure, your Honor.

3 Your Honor, just my understanding: My understanding  
4 was that the government had made a commitment, and what your  
5 Honor expected was by the end of the court date, not tomorrow's  
6 witnesses but the witnesses for the day after, was my  
7 understanding of what we would be getting.

8 THE COURT: Thank you.

9 Counsel?

10 MS. RAVENER: Again, your Honor, we're happy to  
11 provide it to Ms. Necheles and counsel for defendant Grant as  
12 soon as we get back to our office and look at the schedule and  
13 whether any changes need to be made.

14 THE COURT: Good. Thank you. I understand the  
15 government is going to provide that list to counsel for  
16 defendants today.

17 Counsel for Mr. Grant, the extra copies of the  
18 exhibits that I said I'd be happy to give to your side today is  
19 in my chambers, so after I leave here, you should feel free to  
20 have somebody come down to my chambers, and somebody from my  
21 chambers will give you the set of binders.

22 MR. MERINGOLO: I can come in the morning, Judge.

23 THE COURT: That's fine. I'll give it to you today.  
24 If you don't need it tonight, you'll get it from the government  
25 tomorrow.

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1 MR. MERINGOLO: May I speak to them now?

2 (Pause)

3 MR. MERINGOLO: Your Honor, they're going to give it  
4 to me in the morning. Thank you for the courtesy.

5 THE COURT: Good.

6 Anything else we need to take up now?

7 Thank you, all, very much for all of your work today.  
8 We're in recess. I'll see you tomorrow morning at 9:00 thank  
9 you, all.

10 MS. RAVENER: Thank you, your Honor.

11 (Adjourned to November 6, 2018 at 9:00 a.m.)

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